

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 15

LIBRARY
SUPREME COURT

JOSEPH MANDOLI, ALSO KNOWN AS GUISEPPE
MENDOLIA, PETITIONER,

vs.

DEAN ACHESON, SECRETARY OF STATE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 19, 1952

CERTIORARI GRANTED JUNE 9, 1952.



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JOINT APPENDIX

Washington, D. C.,
October 17, 1950.

The above-entitled action came on for hearing on application for declaratory judgment, before the HON. JENNINGS BAILEY, United States District Court Judge, at 1:30 o'clock p.m.

APPEARANCES:

For the Plaintiff: JACK WASSERMAN, Esq., and HARRY MEISEL, Esq.

For the Defendant: ROSS O'DONOGHUE, *Assistant United States Attorney.*

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PROCEEDINGS

Deputy Court Clerk: Mandoli *v.* Acheson.

Mr. Wasserman: We have an interpreter in this case, Your Honor.

The Court: Who represents the plaintiff?

Mr. Wasserman: I represent the plaintiff.

The Court: Then you get at that end of the table, please. Meantime, I will look over the file. There has been no pretrial, has there?

Mr. Wasserman: Yes, there was a pretrial, Your Honor.

The Court: I do not find the pretrial order.

Mr. Wasserman: Your Honor, I can give you a copy.

Your Honor please, I find I have two of them in my file. I am not sure whether I gave you the right one; I know this is the right one.

The Court: Very well, proceed.

Mr. Wasserman: Mr. Mandoli, will you take the stand, please.

(Mr. Paul Mandoli was duly sworn as Interpreter.)

Thereupon—

JOSEPH MANDOLI, called as a witness in his own behalf; being duly sworn, testified Italian, as follows:

Direct examination.

By Mr. Wasserman:

27 Q. Are you the plaintiff in this action, Mr. Mandoli?

The Interpreter: I am.

The Court: You are not the plaintiff, ask him.

By Mr. Wasserman:

Q. What is your name?

A. Joe Mandoli.

Q. Are you the plaintiff in this action? Did you bring this suit?

A. Yes, sir.

Mr. O'Donoghue: Your Honor, I don't believe the Interpreter understands his function. For example, it apparently happened that he told him what to answer rather than merely translated the question.

The Court: I will tell him. When the lawyer asks the question, then you repeat that question to the witness in Italian; when he answers in Italian, you answer in English.

The Interpreter: All right.

By Mr. Wasserman:

Q. Where were you born?

A. He was born in Ohio, Ravina.

Q. R-a-v-i-n-a, Ohio, in the United States; is that correct?

A. Yes.

Q. And when were you born?

28 A. September 17, 1907.

Q. I show you a baptismal certificate and ask you if this relates to you. Does this refer to you?

The Court (to interpreter): Now, you repeat the question.

(The question was repeated in Italian.)

The Witness (in English): Joe Mandoli, mother—

By Mr. Wasserman:

Q. You don't need to read it, I want to know if that is his baptismal certificate.

A. Yes, sir.

The Court: This is simply a certificate of his baptism, not of his birth.

Mr. Wasserman: Well, among other things, it has been stipulated that—as I understand it, there is no contention that the plaintiff was not born in the United States.

The Court: Very well.

Mr. Wasserman: I have another and an older baptismal certificate.

By Mr. Wasserman:

Q. I show you another certificate and ask you if this relates to you; does this refer to you?

The Court (to interpreter): Now, ask him that question.

The Interpreter: Yes, sir.

29 The Court (to interpreter): Just a minute, ask him that question.

(The question was repeated in Italian.)

A. Yes, sir.

The Court: Let me see it. This is another certificate of baptism but, as I understand, the Government stipulated he was born in this country.

Mr. O'Donoghue: I have not so stipulated, Your Honor. I answered that I did not know where he was born. I stipulated that the baptismal certificates might be introduced without formal proof, subject to materiality and relevancy.

(Plaintiff's Exhibit No. 1, baptismal certificate dated November 24, 1948; and Plaintiff's Exhibit No. 2, baptismal certificate dated October 16, 1907, were marked for identification.)

By Mr. Wasserman:

Q. I have in my hand a letter written by the American Vice Consul in Palermo, Italy. I understand that the Government has stipulated that this may be introduced in evidence without formal proof.

(Plaintiff's Exhibit No. 3, letter dated November 17, 1947 from Vice Consul, Palermo, was marked for identification.)

The Court: Let me see it. Very well.

Mr. Wasserman: I offer these documents in evidence.

The Court: Very well.

Mr. O'Donoghue: I am not sure I know what that
30 is, Your Honor.

(Plaintiff's Exhibit No. 3 was handed to Mr. O'Donoghue.)

Mr. O'Donoghue: I have no objection to the introduction of that document.

The Court: No, I didn't think you would.

(Plaintiff's Exhibits Nos. 1, 2, and 3 were received in evidence.)

By Mr. Wasserman:

Q. Where were your father and mother born, Mr. Mandoli?

A. In Italy.

Q. And of what country were they citizens?

A. They come from Sicily.

Q. Were they ever citizens of the United States?

A. No.

Q. Were they citizens of Italy?

A. Yes, sir.

Q. Now, in 1931, did you go into the Italian Army?

A. Yes, sir.

Q. Did you volunteer or were you inducted into the Italian Army?

A. They took him, they put him in the army, see, but he no want to go at all.

Q. At that time, did you want to go into the Italian Army?

31 A. No.

Mr. O'Donoghue: I object to that, Your Honor.

The Court: I am letting it in for what it is worth.

By Mr. Wasserman:

Q. Under what circumstances did you enter the Italian Army? Will you tell His Honor just what happened when you were asked to go into the Italian Army?

A. When he went to the Army, he told them he refused to go, but they took him just the same, because he told them he was an American citizen.

Q. Do you know what would have happened to you if you had refused to enter the army?

Mr. O'Donoghue: I object to that, Your Honor.

The Court: I sustain the objection. Don't answer, he is not to answer that; I sustain the objection.

By Mr. Wasserman:

Q. Before you entered the Italian Army, did you go to the American consulate?

A. Yes.

Q. And what did you say or do there?

A. He went to the Italian counsel, tell them he was to go to the army and they make him sign a paper in Palermo, Italy, and the Italian counsel told him they will do the rest.

The Court: I think we need an interpreter for the interpreter. Will the reporter read the answer?

32 (The answer was read.)

By Mr. Wasserman:

Q. When you refer to the Italian counsel, do you mean the consul who represented the government of Italy; or do you mean the American Consul in Italy?

A. He meant the American Consul.

Q. Did you, in 1931, when you were inducted into the Italian Army, or any time thereafter, ever take an oath of allegiance either to the King of Italy, to the Government of Italy, or to the Kingdom of Italy?

A. He never, he say he was sick in the hospital it was that time you swear you were in the army and he wasn't there, he was in the hospital sick.

Q. How long were you in the hospital in 1931, in the Italian Army?

A. Four months and twenty days.

Q. And at the end of the four months, were you discharged from the Italian Army?

A. Yes.

Q. Now, in 1944, did you apply to the American Consul for a passport, for an American passport?

A. He did.

Q. Were you ever granted an American passport by the Italian Consul in Palermo?

A. They refused to give it, because they said he 33, was in the army.

Mr. Wasserman: No further questions, Your Honor.

Cross-examination.

By Mr. O'Donoghue:

Q. Mr. Mandoli, is your name Mandoli or Mendolia?

The Interpreter: My name is like his name, M-e-n-d-o-l-i.

Mr. O'Donoghue: You are not repeating what he told you now, are you?

The Interpreter: No, that is my name. I thought you were speaking to me, or speaking to him?

Mr. O'Donoghue: I will ask you the questions and you propound them to the witness. When he answers, you repeat in English.

The Interpreter: All right, go ahead.

By Mr. O'Donoghue:

Q. You spell your name M-a-n-d-o-l-i-a, is that correct?

The Witness (in English): M-a-n-d-o-g-l-e-i, Italiano. Americano——

The Court: He has put a "g" in it now, M-a-n-d-o-g——

By Mr. O'Donoghue:

Q. Your name is not M-a-n-d-o-l-i, as appears on these baptismal certificates? This is not your name on Plaintiff's Exhibits 1 and 2, is it, Mr. Mandolia?

A. No, it is not the way he spells his name, it is not right.

34 The Court: I can't tell who to listen to, the witness or the interpreter.

Mr. O'Donoghue: It appears to me to be a collaboration.

The Court: I think so.

Mr. Wasserman: May I suggest the interpreter be instructed again?

The Court: You ask the questions that the lawyer asks the witness. You ask him, then when he answers, you repeat his answers. You are not the one to answer the questions yourself, but the witness is the one to answer them.

The Interpreter: Yes, sir, all right.

The Court: Let me see those exhibits again.

By Mr. O'Donoghue:

Q. Mr. Mandolia, when did you first come to the United States?

A. September 21.

Q. Of what year?

A. 1948.

Q. You first came to the United States on September 21, 1948?

A. Yes, sir.

Q. You have no recollection of being in the United States at any time previous to that?

A. He was here before when he was about four months old. He was born here and when he was four months, his father and mother took him back to Italy.

35 Q. You have no recollection, yourself, of having been here at that time?

A. Why, the only thing he can say, he left when he was four months and then he don't know anything about it. He can't tell you anything because he was so young.

Q. Now, have you been told when your mother and father came to the United States?

Mr. Wasserman: Objection, Your Honor. I can't see the relevancy of this question.

The Court: Well, I haven't heard the answer yet. What is his answer? What did he say?

A. He said he only was here when he was from four months, when he was born and taken back. His parents told him he was born in the United States, that was all.

The Court: Very well. You object to that?

Mr. Wasserman: No, Your Honor, I withdraw the objection.

By Mr. O'Donoghue:

Q. I will repeat the question I asked before, if he knows or has he been told when his parents came to the United States.

Mr. Wasserman: Objection, Your Honor.

The Court: I overrule the objection.

A. Between 1901 and 1902.

By Mr. O'Donoghue:

36 Q. Your first recollections as a child were that you were in Italy, is that correct?

The Court: When he was three or four months old, he would hardly recall anything in this country.

Mr. O'Donoghue: No, Your Honor, exactly. I merely want to place the continuity in Italy, that is the object of the question.

By Mr. O'Donoghue:

Q. Now, from your earliest recollections, you have always been in Italy, is that correct?

A. Yes.

Q. Now, you made an effort to obtain a passport to come to the United States in 1944, is that correct?

A. Yes.

Q. That was your first effort to come to the United States, is that correct?

A. He make two before, one on 1917, and the other one—in '17 when he make the application they refuse.

Q. In '17, did he say?

A. In '17, the first time he did make one, they wouldn't let him come because he was under age, under eighteen years old.

Q. When he was 17, or in 1917, which?

A. He say about fifteen, that is what he say.

Q. He was fifteen years old?

37 A. He supposed he was too young, they wanted to bring him over to this country because he was too young to let him go by himself.

Q. Who said he was too young?

A. The consul at Palermo told him, otherwise he'd have to have somebody to take charge from Italy to the United States. That is what he say, he say that he'd have to have somebody to bring him up from Italy to United States, because he was under age.

Q. Did you make any other attempt to come to the United States?

A. On 1937.

Q. In 1937?

A. Yes.

Q. What was the nature of that application?

A. They refused to let him come because he went in the army.

Q. Now, how old were you in 1937? You were thirty years old, is that correct?

The Court: Can't he answer a simple question like that.

The Interpreter: He is so nervous, Your Honor.

A. Twenty-nine years old.

Mr. O'Donoghue: Will you mark this Application for

Certificate of Identity, Defendant's Exhibit No. 1 for identification, please?

38 (Defendant's Exhibit No. 1, Application for Certificate of Identity, was marked for identification.)

The Court: There is no question being asked, tell him to be quiet.

By Mr. O'Donoghue:

Q. Now, after the suit was filed, do you remember making an Application for a Certificate of Identity so that you might come to this country in order to prosecute this suit?

A. He went to the consul, they give him a—

The Court: Will the reporter read the answer?

The Reporter: I didn't get all of it, Your Honor.

A. The consul from Palermo notify him to come over to this country to defend his case.

The Court: Will the reporter read the answer?

(The answer was read.)

The Court: Have you anything signed by him there?

Mr. O'Donoghue: Yes, Your Honor.

The Court: Submit it to him and see if that is his signature.

By Mr. O'Donoghue:

Q. Is this your signature, Mr. Mandolia?

A. Yes, sir, that is his name.

The Court: He signed his name M-a-n-d-o-l-i-a, not M-a-n-d-o-g-l-i-a.

39 Mr. O'Donoghue: Apparently so, Your Honor.

By Mr. O'Donoghue:

Q. Now, Mr. Mandolia, while Mussolini was in power, were there any elections in Italy?

The Court: I don't know what the interpreter is asking him. Will the reporter please read the question?

(The question was read.)

The Court: Now, ask him that question and take his answer.

A. Yes.

By Mr. O'Donoghue:

Q. Were you compelled to vote in any of those elections?

Mr. Wasserman: Objection, Your Honor, this is not an issue, and even if he did vote, I can't see the materiality, during Mussolini's—

The Court: I think it is a question bearing upon it. I overrule the objection.

Mr. O'Donoghue: Will the reporter read the question?

(The question was read.)

A. He never votes, he never votes.

Mr. O'Donoghue: I didn't get the answer.

(The answer was read.)

Mr. O'Donoghue: Is that all the witness said in response to that question?

40 The Interpreter: He say the same thing all the time, he say he never votes.

By Mr. O'Donoghue:

Q. Was there any attempt to compel you to vote during the regime of Mussolini?

A. They never bother him.

Q. Did anyone ever bother you—

A. He said they have never forced him to vote there, they never forced him at all.

Q. They never forced him. Now, after the war, there were elections in Italy, were there not?

A. There was.

Q. Do you know what years those elections were held, the national elections?

A. 1946.

Q. Was there another election in April of 1948?

A. There was.

Q. You were in Italy in April of 1948, were you not?

A. He was.

Q. And I suppose you remember quite well the propaganda, both Communist and anti-Communist, do you not?

A. In Sicily where he comes from, there was a little propaganda but not much, he comes from a small city.

Q. Now, were you urged to vote in order to keep the Communists out of power?

Mr. Wasserman: Objection, Your Honor.

41 The Court: I don't think it makes any difference in this case whether he is a Communist or not; if he is an American citizen, he is an American citizen.

Mr. O'Donoghue: That is true, Your Honor.

The Court: The only question of voting is whether that shows an intention to remain in Italy, that is the only relevancy of the voting.

Mr. O'Donoghue: It may well be, however, if he did vote in those elections, he would have lost his citizenship in that way. I don't know that he did, but it seemed to me appropriate.

The Court: I cannot go into the question of whether or not he is a Communist.

Mr. O'Donoghue: No, Your Honor; no, I don't intend to do that. I merely thought that he would be more inclined to answer that he voted in the elections if he thought it was anti-Communist.

The Court: I think it is relevant whether or not he voted in an election in Italy.

Mr. Wasserman: I think, Your Honor, the witness has already answered that he never voted.

The Court: I don't know what he has answered.

Mr. Wasserman: This is not raised by the pleading, but if Your Honor wants the answer to it—

42 The Court: It is simply a question of evidence on the issues raised in the pleading, that is all.

Mr. Wasserman: It is not raised by a pleading.

The Court: His citizenship is raised by the pleading and it bears on that question, to my mind.

You may ask him if he ever voted in Italy, and when.

By Mr. O'Donoghue:

Q. Did you vote in either the election of 1946 or 1948?

A. He never voted because he was an American citizen, because he wants to come back in this country.

Mr. O'Donoghue: I have no further questions.

Mr. Wasserman: Plaintiff rests.

Mr. O'Donoghue: I offer Defendant's Exhibit No. 1 for identification in evidence, and rest.

Mr. Wasserman: Objection, Your Honor.

The Court: On what ground?

Mr. Wasserman: As I understand it, this is primarily a statement of the American Consul as the grounds for permitting him to come over into the United States to prosecute this action, and he even shows on it that originally the American Consul refused to issue the Certificate of Identity.

The Court: Well, let me see it. Well, it is signed by him, I overrule the objection.

(Defendant's Exhibit No. 1 was received in evidence.)

43 Mr. Wasserman: I would like to recall the plaintiff solely to question him about this, and a few other questions.

The Court: Very well.

Redirect examination.

By Mr. Wasserman:

Q. Mr. Mandoli, when you signed Defendant's Exhibit No. 1, were the questions and answers therein contained read to you in the Italian language?

A. It was wrote in English.

The Court: Will the reporter read the answer?

(The answer was read.)

By Mr. Wasserman:

Q. Was it read to you in English?

A. Yes, English.

Q. Did you understand what was contained in this statement?

A. He didn't understand it.

Q. Did you ever tell the American Consul that you took an oath of allegiance to the King of Italy on May 24, 1931?

A. No.

Q. Did you ever tell the American Consul that you never protested against your induction into the Italian Army?

A. Well, he told me he was protest when he was in the army, they never can find out anything.

Q. Do you know; I am reading from Questions No. 12, what FS Regulations, XXI-L032 and Code of Federal Regulations 1921, C, means?

Will you read to him paragraph No. 12 on Defendant's Exhibit, and ask him whether that was ever read to him and whether he now, or at any time, understands what that question means?

The Interpreter (reading in English): I can't see it very good.

Mr. Wasserman: May I show him the original, which is not a photostat? Read it to him in Italian.

The Interpreter: Well, I read it to him.

By Mr. Wasserman:

Q. Does he understand what that means?

A. He doesn't understand it very good.

Q. Does he understand what that means?

A. No.

Q. Did you ever tell the American Consul, or anyone in his office, to put that down on this application?

A. They make everything they make down there, he don't know nothing about it.

The Court: Will the reporter read the answer?

(The answer was read.)

By Mr. Wasserman:

Q. Now, is your name spelled both M-a-n-d-o-l-i and M-e-n-d-o-l-i-a?

Mr. O'Donoghue: I object, Your Honor, that is
45 purely leading.

The Court: I overrule the objection, answer the question.

A. M-a-n-d-o-l-i.

By Mr. Wasserman:

Q. Is there an English spelling to his name and an Italian spelling to his name?

The Interpreter: Yes.

By Mr. Wasserman:

Q. Now, what is the Italian spelling?

The Interpreter: M——

Mr. Wasserman: Let him answer the question.

The Court: Just a minute. Interpreter, don't you understand you are not testifying?

The Interpreter: No, Your Honor.

The Court: You ask him that question and then repeat his answer.

The Witness (in English): M-a-n-d-o-l-i.

The Interpreter: M-e-n-d-o-l-i-a.

Mr. Wasserman: That is the Italian spelling?

The Interpreter: Yes.

Mr. Wasserman: What is the English spelling?

The Court: I didn't think he added that final "a". I thought he said M-a-n-d-o-l-i. He didn't add any "a". Ask him again how to spell his name.

(The witness wrote his name for the Court.)

46 The Court: M-e-n-d-o-l-i-a.

Mr. Wasserman: Is there an English spelling to your name? Write out the English spelling of your name, if there is an English spelling to your name.

The Court: Just the last name.

(The witness wrote his name for the Court.)

The Court: M-e-n-d-o-l-i, he has it here.

Mr. Wasserman: No further questions, Your Honor.

Mr. O'Donoghue: I have no further questions.

The Court: Is that all?

Mr. Wasserman: Plaintiff rests.

The Court: Proceed with the argument, if that is all.

Mr. Wasserman: Does the defendant rest, Your Honor?

Mr. O'Donoghue: I have rested.

Mr. Wasserman: May it please the Court, I think the essential issue in this case, and the only issue in this case, is the one raised by the pleadings, namely, whether or not this man took an oath when he entered the Italian Army. The State Department has always conceded that he was born in the United States and, as such, was a citizen of the United States at birth.

Mr. O'Donoghue: I object to that argument, Your Honor. I believe there has been no evidence of that at all.

Mr. Wasserman: Well, there is an exhibit here signed by the American Consul, stating that:

47 "This is to certify that Giuseppe Mendolia was born at Akron, Ohio, on September 17, 1907."

In addition, the Application for a Certificate of Identity, which was introduced by the defendant, contains statements accepted by the American Consul that he was born in the United States.

Now, the State Department, itself, and the pleadings so allege, has ruled that he was expatriated by reason of having joined the Italian Army and taken an oath in connection with the service in the Italian Army. That presupposes that he was an American citizen, otherwise he could not have been expatriated under the Expatriation Act of 1907.

Now, the plaintiff has testified that he, at no time, ever took an oath of allegiance to the Government of Italy, to the King of Italy, or to the Kingdom of Italy. To my mind,

his statement is uncontradicted, except for an application which was typed out in the American consulate at Palermo, and I think the State Department, and anyone who has had anything to do with these applications, knows that they are generally made out by the office of the American Consul, itself. He did not make any statements, according to his testimony, to the effect that he had ever taken an oath. As a matter of fact, he testified affirmatively that he protested against his induction into the Italian Army.

Now, there are really two points in that connection:

48-49 First, he did not in fact take an oath; second, even if he did take the oath, which we deny, he was forced to join the Italian Army and any oath that would have been administered under those circumstances would have been under duress.

Under the circumstances, I feel that the declaratory judgment should be granted in favor of the plaintiff.

The Court: I find that the plaintiff was born in this country, but he expatriated himself by joining the Italian Army by taking an oath of allegiance to the Italian Government, which he was not coerced to take.

Counsel will draw an order for that.

Mr. O'Donoghue: Is it all right to submit findings of fact?

The Court: Very well.

(Thereupon, the hearing was adjourned at 2:30 o'clock p.m.)

Filed January 11, 1950

The plaintiff, by his attorneys, respectfully alleges:

1. That this is an action for a declaratory judgment of citizenship under Section 503 of the Nationality Act of 1940 as amended (54 Stat. 1171, 8 U.S.C.A. 903).

2. That the defendant is Secretary of State and as such is charged with the duty of issuing and revoking passports

of American citizens and charged with general supervision of the foreign consular service of the United States.

3. That the plaintiff was born in the United States on September 17, 1907 and was a United States citizen at birth.

4. That the defendant acting through his duly authorized agents has ruled that the plaintiff has lost his American citizenship and expatriated himself under the Expatriation Act of 1907 by service in the Italian Army from April 14, 1931 until September 5, 1931 and by taking an oath of allegiance to Italy in connection with the aforesaid military service.

5. That the plaintiff did not take an oath of allegiance to the Italian Government nor to the King of Italy.

51 6. That the plaintiff was inducted into the Italian Army against his will and under duress and any alleged oath of allegiance taken in connection with the said military service was involuntary.

7. That at all times the plaintiff has avowed his American citizenship and nationality and at no time did he wilfully, knowingly or intentionally commit or perform any act which would constitute a repudiation of his American citizenship or nationality.

8. That the plaintiff applied to the American Consul in Italy for an American passport and the same was denied on the ground that plaintiff expatriated himself under the Expatriation Act of March 2, 1907 for the reason that he took an oath of allegiance to the King of Italy in connection with the aforesaid military service in Italy.

9. That by reason of the action of the defendant acting through his duly authorized agents, plaintiff has been deprived of rights which inured to him under the Constitution and laws of the United States and is being denied the privileges accorded to citizens of the United States.

10. That the plaintiff is a citizen of the United States.

WHEREFORE plaintiff respectfully asks for a judgment declaring that he is a citizen of the United States.

JACK WASSERMAN,
Attorney for Plaintiff.

ANSWER

Filed March 10, 1950

First Defense

The complaint fails to state a cause of action upon which relief may be granted.

Second Defense

Answering the numbered paragraphs of the complaint, defendant avers:

1. Defendant is not required to answer the allegation of paragraph 1 of the complaint.
2. Admitted.
3. Defendant is without knowledge or information sufficient to enable him to form a belief as to the truth of the allegations contained in paragraph 3 of the complaint.
4. Admitted.
5. Denied.
6. Denied.
7. Denied.
8. Admitted.
9. It is denied that plaintiff has been deprived of any rights, but it is admitted that he is denied the privileges accorded to citizens of the United States.
10. Denied.

Third Defense

The plaintiff expatriated himself by service in the Italian Army and by taking an oath of allegiance to the King of Italy.

53 WHEREFORE, Defendant demands judgment, together with the costs of this suit.

/S/ GEORGE MORRIS FAY,
United States Attorney.

/S/ ROSS O'DONOGHUE,
Assistant United States Attorney.

PRETRIAL MEMORANDUM

Filed, October 9, 1950

This is an action for declaratory judgment under Section 503 of the Nationality Act of 1940 (8 U.S.C. 903) by which the plaintiff seeks a judgment against the Secretary of State declaring that he is a citizen of the United States. The plaintiff asserts that he was born in the United States on September 17, 1907 and was a United States citizen at birth. The plaintiff's parents were born in Italy and are citizens of Italy. In 1931, while the plaintiff was in Italy, he was inducted into the armed forces of the Italian Government. His induction was not the result of any enlistment on his part in the Italian Army. His period of service in the Italian Army began April 14, 1931 and ended September 5, 1931.

The Secretary of State has ruled that the plaintiff lost his American citizenship under the provisions of the first paragraph of Section 2 of the Act of March 2, 1907, by taking an oath of allegiance to the King of Italy in connection with his military service during the period in 1931 referred to above.

The plaintiff contends that he was inducted into the Italian Army against his will and that any oath of allegiance taken in connection with the said military service was involuntary. He further contends that he did not in fact take an oath of allegiance to the Italian Government nor to the King of Italy.

55 The defendant asserts that the plaintiff served in the Italian Army voluntarily and that he took a voluntary oath of allegiance to the King of Italy on May 24, 1931.

Defendant further asserts that plaintiff was a dual national of the United States and Italy and as such was required to make an election of citizenship upon attaining his majority and that in failing to return to the United States, he elected Italian citizenship.

Stipulations

1. It is stipulated that plaintiff's baptismal certificates, and a letter from the American Vice-consul in Palermo, Italy dated November 17, 1947 with respect to the plaintiff, addressed "To Whom It May Concern" will be admitted in evidence without formal proof subject to materiality and relevance.

2. It is stipulated that under the Italian nationality laws of 1912 the Italian Government considered the plaintiff a citizen of Italy at birth and as such subject to its military laws.

3. It is stipulated that any official government documents, either originals, photostats or carbons, may be introduced without formal proof subject to objection as to their relevancy or materiality.

GEORGE MORRIS FAY,
United States Attorney.

ROSS O'DONOGHUE,
Assistant United States Attorney.

JACK WASSERMAN,
Attorney for Plaintiff.

Date October 9, 1950.

(S) BURNETA SHELTON MATTHEWS,
Pretrial Judge.

56 FINDINGS OF FACT AND CONCLUSIONS OF LAW

Filed, November 16, 1950

This case having come on for trial and the Court having heard the testimony adduced by the plaintiff and having considered the exhibits offered by the plaintiff and defendant, makes the following findings of fact and conclusions of law:

Findings of Fact

1. Plaintiff Joseph Mandoli, also known as Guiseppe Mendolia, was born in Ravenna, Ohio on September 17, 1907 of Italian parents. He was taken by his parents to Italy at the age of four months and has resided in Italy from that

time until coming to the United States on September 21, 1948 on a Certificate of Identity to prosecute this action.

2. Plaintiff's parents are citizens of Italy and under the Italian Nationality Laws of 1912 the Italian Government considered the plaintiff a citizen of Italy at birth and as such subject to its military laws.

3. The plaintiff was inducted into the Italian Army and served in the Italian Army from April 14, 1931 to September 5, 1931. He did not protest his induction into the army.

4. On May 24, 1931, the plaintiff took an oath of allegiance to the King of Italy.

57

Conclusions of Law.

1. Plaintiff was, by birth, a dual national of the United States and Italy.

2. Plaintiff expatriated himself by taking an oath of allegiance to the King of Italy on May 24, 1931.

3. Plaintiff expatriated himself by continuous residence in Italy after attaining his majority and by his failure to elect American citizenship by returning to the United States and taking up permanent residence therein.

(S) JENNINGS BAILEY,
Judge.

58

AMENDED OPPOSITION TO FINDINGS AND CONCLUSIONS PROPOSED BY DEFENDANT

Filed, November 16, 1950

Comes now the plaintiff and objects to the findings and conclusions proposed by the defendant.

1. Objection is taken to proposed finding No. 2 as there was no evidence that the plaintiff failed to protest his induction into the Italian Army. Plaintiff testified that he did protest.

2. Objection is taken to conclusions of law #2 and #4. Plaintiff did not expatriate himself by army service as that was not a ground for expatriation in 1931. There is no statutory provision prohibiting a dual national at birth

from residing abroad all his life and these alleged grounds of expatriation were neither raised by the pleadings nor referred to by the court in its oral opinion.

JACK WASSERMAN,
Attorney for Plaintiff.

59

ORDER

Filed, November 16, 1950

This case having come on for trial and the Court having considered the evidence adduced on behalf of the plaintiff and of the defendant, and it appearing to the Court that defendant should prevail, it is by the Court this 16th day of November, 1950,

ORDERED that judgment be and the same is hereby entered for the defendant, together with the costs of this suit.

JENNINGS BAILEY,
Judge.

60 MOTION FOR NEW TRIAL AND TO SET ASIDE JUDGMENT
FOR DEFENDANT AND ENTER JUDGMENT FOR
PLAINTIFF

Filed, November 22, 1950

Comes now the plaintiff and moves for a new trial of the cause herein and to set aside the judgment for defendant and enter judgment for plaintiff on the following grounds:

1. That defendant's case was confined to proof that plaintiff did not protest his induction into the Italian Army. Such evidence was insufficient to rebut plaintiff's evidence of citizenship and his evidence that he was forced into the Italian Army and that an oath taken in connection therewith was involuntary. The courts have frequently so held.

2. That the evidence establishes the conduct of plaintiff was performed under duress and does not constitute an act of expatriation.—

3. That the evidence was insufficient to overcome the strong presumption of continuity of plaintiff's American

citizenship acquired at birth and that the evidence affirmatively established plaintiff's American citizenship.

4. That the evidence fails to show that an oath was in fact taken and fails to show that the alleged oath of allegiance taken to the King of Italy was required by Italian law. Expatriation therefore did not result therefrom.

5. There is no statutory or other legal basis of expatriating a dual national at birth who maintains a protracted residence abroad.

JACK WASSERMAN,
Attorney for Plaintiff.

61

MEMORANDUM

Filed December 14, 1950

I am still of the same opinion that I had at the hearing of this case and see no ground to change it.

The motion for a new trial will be overruled.

JENNINGS BAILEY,
Judge.

ORDER OVERRULING MOTION FOR NEW TRIAL

Filed December 14, 1950.

Upon the coming on for hearing of the motion filed herein by the Plaintiff for new trial and to set aside judgment for defendant and enter judgment for plaintiff, it is this 14th day of December 1950 ordered that the said motion be, and the same is hereby overruled.

HARRY M. HULL,
Clerk.

By ANNE W. LYDDANE,
Deputy Clerk.

By direction of
JUDGE JENNINGS BAILEY.

63

NOTICE OF APPEAL

Filed, February 8, 1951

Notice is hereby given that Joseph Mandoli, the plaintiff above named, hereby appeals from the judgment for the defendant entered on November 16, 1950, and from the denial of the motion for a new trial and for entry of judgment for the plaintiff entered December 14, 1950.

JACK WASSERMAN,
Attorney for Plaintiff.

HARRY MEISEL,
Of Counsel.

TO THE CLERK OF THE UNITED STATES DISTRICT COURT:

Copies of the above Notice of Appeal are to be mailed to the following:

HON. DEAN ACHESON, *Secretary of State.*

HON. GEORGE MORRIS FAY, *United States District Attorney.*

64

STIPULATION DESIGNATING RECORD

Filed, February 14, 1950

It is hereby stipulated by and between the attorneys for the respective parties herein that the record on appeal consist of the following:

1. Complaint.
2. Answer.
3. Pre-trial Memorandum.
4. Transcript of testimony.
5. Findings of fact and conclusions of law.
6. Amended opposition to findings and conclusions proposed by defendant.
7. Judgment.
8. Motion for new trial and motion for entry of judgment for plaintiff.
9. Order overruling motion for new trial and for entry of judgment for plaintiff.

10. Notice of Appeal.

11. Stipulation designating record.

GEORGE MORRIS FAY,
United States Attorney.

ROSS O'DONOGHUE,
Assistant United States Attorney.

JACK WASSERMAN.

65 SUPPLEMENTAL DESIGNATION OF RECORD

Filed, March 1, 1951

It is hereby stipulated and agreed by and between the attorneys for the respective parties herein that the record in the above matter include the following exhibits which are attached hereto:

1. Plaintiff's Exhibits:

(A) No. 1. Baptismal Certificate dated November 24, 1948.

(B) No. 2. Baptismal Certificate dated October 16, 1907.

(C) No. 3. Letter dated November 17, 1947 from Vice Consul Palermo.

2. Defendant's Exhibit No. 1. Application for Certificate of Identity.

GEORGE MORRIS FAY,
United States Attorney.

ROSS O'DONOGHUE,
Assistant United States Attorney.

JACK WASSERMAN.

66

ORDER

Filed, March 14, 1951

It is by the Court this 14th day of March, 1951,

ORDERED, that all exhibits, both plaintiff's and defendant's, heretofore filed in this case shall be transmitted to

the Court of Appeals in their original form and shall not be photostated or otherwise reproduced.

EDWARD A. TAMM,
Judge.

We consent:

JACK WASSERMAN,
Attorney for Plaintiff.

/s/ L. CLARK EWING,
Assistant United States Attorney, Attorney for Defendant.

67 PLAINTIFF'S EXHIBIT #3

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

American Consulate,
Palermo, Italy, November 17, 1947

To whom it may concern

This is to certify that Giuseppe Mendolia, born at Akron, Ohio, on Sept. 17, 1907, has expatriated himself under the provisions of the first paragraph of Section 2 of the Act of March 2, 1907 by taking an oath of allegiance to the King of Italy in connection with his military service in that country from April 14, 1931 until September 5, 1931.

FOR THE AMERICAN CONSULATE GENERAL,
RENWICK S. McNIECE.
/s/ WALTER GALLING,
American Vice Consul.

(Here follows 1 photo, Defendant's Exhibit 1.)

American
Immigration
Consulate GENERAL

At

APPLICATION FOR CERTIFICATE OF IDENTITY**UNDER SECTION 503 OF THE NATIONALITY ACT OF 1940**

(See notes 31 and 32, sec. XXI-1, Foreign Service Regulations)

I, the undersigned applicant for a certificate of identity under section 503 of the Nationality Act of 1940, being duly sworn, state that:

- (1) My full and true name is Giuseppe MENDOLIA
(2) I am now residing at Via Tenente Baldassare Granozzi, 45, Santa Ninfa (Trapani), Italy
(3) I claim to be a national of the United States born at Akron, Ohio on September 17, 1907.

Reference is made to application for registration executed by applicant on Dec. 29, 1944.
the claim, and the evidence submitted herewith. The statements should conform, so far as practicable, to the statements required in applications for passports.

(4) I have not committed any act which, to my knowledge, might have implied allegiance to, or a claim of nationality of, a foreign state, except as follows: (If any such act has been committed by the applicant, he shall specify in the following space the precise nature of the act, the place where and time when it was committed, and explain how, notwithstanding such act, his claim of United States nationality is made in good faith.)

Applicant entered the Italian Army on April 14, 1931, took the oath of allegiance to the King of Italy on May 24, 1931 and was discharged on September 5, 1931. He never protested against such induction.

- (5) I claim a right or privilege as a national of the United States by birth

(State specifically the nature of such claim)

(6) Such right or privilege has been denied me by a Department or agency or executive official of the United States on the ground that I am not a national of the United States. Department of State, Washington, D.C. - Instruction addressed to the Consulate

(State by what Department or agency or executive official of the United States)

General at Palermo, Italy, dated February 22, 1945.

(the right or privilege was so denied, and the date and place of such denial)

(7) I have instituted against the head of such Department or agency in the District Court of the United States for the District of Columbia, or in the district court of the United States for the district in which I claim permanent residence, an action for a judgment declaring that I am a national of the United States.

The United States District Court, Southern District of New York, N.Y.

(State the title and place of the court in which such action has been instituted, and when instituted)

- (8) Such action was instituted in good faith, with the intention of prosecuting it to conclusion, and is pending in such court.

(9) I desire to proceed to the United States to prosecute such action.

(10) If granted a certificate of identity and admitted to the United States for the purpose of prosecuting such action, I will do so with due diligence.

(11) I understand that my admission to the United States shall be under regulations prescribed in part 112 of chapter 1, title 8, Code of Federal Regulations, and upon the condition that I shall be subject to deportation if the final outcome of such court action is not to the effect that I am a national of the United States and if I then fail to depart without delay from the United States in accordance with directions from the Immigration and Naturalization Service.

- (12) I have filed a previous application for a certificate of identity under section 503 of the Nationality Act of 1940. That application was filed on Feb. 24, 1948 at Palermo, Italy

It was granted (denied) under F.S. Regu-

lations XXI-L. Note 32 and Code of Federal Regulations 1921(o) as lacking any substantial basis whatever.

- (13) Since acquiring United States nationality I have applied for passports of the following-named governments:

Application for registration at the American

(granted) (not granted)

Consulate General at Palermo, Italy on Dec. 29, 1944

(granted) (not granted) Feb. 22, 1945

(Government, place, date, and name under which applied for)

(granted) (not granted)

(Date)

- (14) I have applied for United States Immigration visas and United States visas on passports as follows:

(granted) (not granted)

(granted) (not granted)

(granted) (not granted)

(Date)

- (15) I was born on the 17th day of September in the year 1907 Since birth I have resided as follows:

Italy from 1912 to date.

(State where, when, and for what periods)

pursuing the following occupations: Mason

(State where and when with respect to such occupation)

My permanent residence is Via Ten. B. Granozzi, 45, S. Ninfa (Trapani), Italy and has been so since 1912

I have entered the United States as follows: Resided from birth to 1912

(Place, date, name of port of entry, name used in entering)

(and name of vessel or aircraft, if any, by which brought)

- (16) The names and addresses of my parents are as follows: Mother Marianna Spina

Address S. Ninfa, ItalyFather Francesco MendoliaAddress do.

and my nearest relative in the U.S. is Beatrice Adorno - sister-in-law

residing at 100 Columbia Ave.,

[fol. 34] [Stamp:] United States Court of Appeals for the
District of Columbia Circuit. Filed Jan. 10, 1952. Joseph
W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT, JANUARY TERM, 1952

No. 10,958

JOSEPH MANDOLI, Also Known as GUISEPPE MENDOLIA,
Appellant,

v.

DEAN ACHESON, Secretary of State, Appellee

Appeal from the United States District Court for the
District of Columbia

Before Edgerton, Proctor, and Bazelon, Circuit Judges

JUDGMENT

This cause came on to be heard on the transcript of the
record from the United States District Court for the Dis-
trict of Columbia, and was argued by counsel.

On consideration whereof, it is ordered and adjudged
by this Court that the order of the said District Court
appealed from in this cause be, and the same is hereby
affirmed.

Per Circuit Judge Edgerton.

January 10, 1952.

[fol. 35] [Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed Jan. 23, 1952. Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,958

JOSEPH MANDOLI, Also Known as Guiseppe Mandolia,
Appellant,

v.

DEAN ACHESON, Appellee

DESIGNATION OF RECORD

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint appendix.
2. Opinion of the Court of Appeals.
3. Judgment of the Court of Appeals.
4. Designation of record.
5. Clerk's certificate.

Jack Wasserman, Warner Building, Washington,
D. C., Attorney for Appellant.

Certificate of Service

I hereby certify that the foregoing Designation of Record has been served upon Appellee by mailing a copy thereof to his attorney, Hon. Charles M. Ireland, United States Attorney, at Washington, D. C. this 22nd day of January, 1952.

Jack Wasserman.

[fol. 36] UNITED STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages numbered 1 to 35, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties and of the record and proceedings in the said Court of Appeals, as designated by counsel for appellant, in the case of Joseph Mandoli, also known as Guiseppe Mendolia, Appellant v. Dean Acheson, Secretary of State, Appellee, No. 10,958, January Term, 1952, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this twenty-fifth day of January, A. D. 1952.

Joseph W. Stewart, Clerk of the United States Court
of Appeals for the District of Columbia Circuit.
(Seal.)

(9860)

[fol. 34] [Stamp:] United States Court of Appeals for the
 District of Columbia Circuit. Filed Jan. 10, 1952. Joseph
 W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
 COLUMBIA CIRCUIT, JANUARY TERM, 1952

No. 10,958

JOSEPH MANDOLI, Also Known as GUISEPPE MENDOLIA,
 Appellant,

v.

DEAN ACHESON, Secretary of State, Appellee

Appeal from the United States District Court for the
 District of Columbia

Before Edgerton, Proctor, and Bazelon, Circuit Judges

JUDGMENT

This cause came on to be heard on the transcript of the
 record from the United States District Court for the Dis-
 trict of Columbia, and was argued by counsel.

On consideration whereof, it is ordered and adjudged
 by this Court that the order of the said District Court
 appealed from in this cause be, and the same is hereby
 affirmed.

Per Circuit Judge Edgerton.

January 10, 1952.

[fol. 35] [Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed Jan. 23, 1952. Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,958

JOSEPH MANDOLI, Also Known as Guiseppe Mandolia,
Appellant,

v.

DEAN ACHESON, Appellee

DESIGNATION OF RECORD

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint appendix.
2. Opinion of the Court of Appeals.
3. Judgment of the Court of Appeals.
4. Designation of record.
5. Clerk's certificate.

Jack Wasserman, Warner Building, Washington, D. C., Attorney for Appellant.

Certificate of Service

I hereby certify that the foregoing Designation of Record has been served upon Appellee by mailing a copy thereof to his attorney, Hon. Charles M. Irelan, United States Attorney, at Washington, D. C. this 22nd day of January, 1952.

Jack Wasserman.

[fol. 36] UNITED STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages numbered 1 to 35, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties and of the record and proceedings in the said Court of Appeals, as designated by counsel for appellant, in the case of Joseph Mandoli, also known as Guiseppe Mendolia, Appellant v. Dean Acheson, Secretary of State, Appellee; No. 10,958, January Term, 1952, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this twenty-fifth day of January, A. D. 1952.

Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit.
(Seal.)

[fol. 37] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1952

No. 597

JOSEPH MANDOLI, Also Known as GUISEPPE MENDOLIA,
Petitioner,

vs.

DEAN ACHESON, Secretary of State

ORDER ALLOWING CERTIORARI—Filed June 9, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is transferred to the summary Docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(2565)